## TAN SIEW CHOON v. TAN KAI HO

**[O.C.J. (Choor Singh J.) June 27, 1970]**

**[Singapore — Divorce No. 6 of 1973]**

*Family Law — Nullity of marriage — Wilful refusal to consummate — Just excuse — Husband's refusal to arrange for Chinese ceremony — Women's Charter (Cap. 47), s. 91(1)(f).*

This was a wife's petition for a decree of nullity of marriage on the ground of her husband's wilful refusal to consummate the marriage within the meaning of section 91(1)(f) of the Women's Charter.

The parties, both Chinese, were married at the Registry of Marriages in Singapore. They had agreed that the ceremony at the registry was to be followed by another ceremony in accordance with the Chinese custom. It was also understood that there could be neither cohabitation nor consummation of the marriage pending the Chinese ceremony. The respondent however made no attempt to arrange for the Chinese ceremony. The petitioner after waiting for several months discovered that the respondent was engaged to be married to another girl.

**Held:** on the facts of the case there was wilful refusal on the part of the husband to consummate the marriage. Therefore the petitioner was entitled to a decree nisi declaring the marriage null and void.

Rule in *Jodla* v. *Jodla*[1] followed.

*Case referred to:-*

(1) *Jodla* v. *Jodla* [1960] 1 W.L.R. 236.

DIVORCE.

*Sahul Hameed* for the petitioner.

Respondent not represented.

**Choor Singh J.:** This is a wife's petition for a decree of nullity of marriage on the ground that the marriage has not been consummated owing to the wilful refusal of the husband to consummate the marriage.

I accept the petitioner's evidence that the marriage has not been consummated. There is no evidence to the contrary, the petition being undefended. The only question is, whether or not, on the facts of this case, there is wilful refusal of the husband to consummate the marriage within the meaning of section 91(1)(f) of the Women's Charter (Chapter 47).

The parties are both Chinese and are domiciled in Singapore. They were married before the Registrar of Marriages at the Singapore Marriages Registry on the 2nd June 1970. They had agreed that the ceremony at the Registry of Marriages was to be followed by another ceremony conducted according to Chinese customary rites (hereinafter referred to as the Chinese ceremony). It was understood between the parties that there could be neither cohabitation nor the consummation of the marriage pending that ceremony. After the ceremony at the Registry the husband left for Pulau Bukom where he was employed and before leaving he informed the petitioner that he would fix a date for the Chinese ceremony. A week later he came and saw the petitioner at her mother's house and told her that he was looking for accommodation for them to set up their matrimonial home and that the Chinese ceremony would take place when he had found such accommodation. A week later he came again and told her that he was still looking for accommodation and that the Chinese ceremony would take place as soon as he had found suitable accommodation. The petitioner told her husband that they could live in a room at her mother's house and requested him to make arrangements for the Chinese ceremony but there was no response to this suggestion from the respondent. After the second visit the respondent did not come again to visit the petitioner and I accept her evidence that during those two visits at her mother's house, the husband did not have any matrimonial intercourse with her.

After having waited for several months the petitioner went to look for the respondent at his father's house in Batu Pahat. She could not find him there. She then went to see one of his friends named Lee Cheng Chuan who informed her that the respondent was going about with another girl. He gave her the address of this girl's house. The petitioner went to the given address and there she met the girl's mother who informed her that the respondent was engaged to be married to her daughter. The petitioner was very upset and felt hurt on hearing this. Several weeks later the respondent came to the petitioner's house and persuaded her to go to the Queen's theatre for a cinema show. There he told her that his father objected to their marriage. He also informed her that he had been living with another girl for quite some time. After this the petitioner and the respondent parted company and never met again.

The petitioner was questioned as to whether she had ever asked her husband to consummate the marriage and she replied that as they had not undergone the Chinese ceremony there could be no matrimonial intercourse between them.

The petitioner's case is that her husband wilfully refuses to proceed with the Chinese ceremony and thereby wilfully refuses to consummate the marriage.

I accept the petitioner's evidence that the respondent knew his wife's views on the matter that there would be no consummation until the Chinese ceremony which was to follow the wedding at the Marriage Registry. I accept the wife's evidence that she is fully prepared to live with the respondent as man and wife in the fullest sense after the Chinese ceremony has been performed. By his refusal to proceed with the Chinese ceremony, the necessity for which was a pre-condition to matrimonial cohabitation, the husband, in the particular circumstances of this case, made it impossible for the wife with a good conscience to live with him as husband and wife and this refusal or failure to proceed with the Chinese ceremony was in this case a just excuse for her to refuse sexual intercourse even if it had ever been requested. There is no evidence that the husband ever requested intercourse in terms, and in my opinion, on the facts, it is really unnecessary to make a finding because even if he has requested intercourse she nevertheless has a just excuse for refusing until there has been a Chinese ceremony. By his refusal to proceed with such a ceremony the husband put it out of the power of the wife to request intercourse. She had suggested that they undergo a Chinese ceremony and live in a room in her mother's house but there was no response to this suggestion from the husband. This request was

refused without any just excuse on the part of the husband. On the facts of this case, in my opinion, there was wilful refusal on the part of the husband to consummate the marriage.

The view I take in this case is supported by the decision in *Jodla* v. *Jodla*.[1] In that case the parties entered into a ceremony of marriage at a register office. They were both Roman Catholics and fully appreciated that their faith did not countenance matrimonial relations between them until there had been a religious ceremony which the husband therefore promised to arrange. In fact he did not arrange such a ceremony although repeatedly requested by the wife who was at all times, subject to the ceremony taking place, willing to render the husband his full matrimonial rights. On proceedings by both parties, for a decree of nullity on the ground of the other's wilful refusal to consummate the marriage it was held that by his refusal to proceed with the arrangements for the religious ceremony, the husband had given the wife just excuse to refuse to have sexual intercourse with him; that the wife's request to him to make such arrangements constituted an implied request for sexual intercourse which the husband had refused without just excuse, thereby wilfully refusing to consummate the marriage; and that the wife was therefore entitled to a decree.

In the present case I find that the petitioner's case has been proved and I grant her a decree nisi declaring the marriage to be null and void. The respondent is condemned to pay the petitioner's costs.

*Petition granted.*

Solicitors: *Murugason & Co.*

# MALAYSIAN REPORTS

## I. INVESTMENT LTD. v. COMPTROLLER OF INLAND REVENUE

**[A.C.J. (Ong Hock Sim F.J.) March 15, 1973]**

**[Penang — Originating Motion No. 5 of 1969]**

*Income Tax — Transfer of immovable property by company to another company in exchange for shares — Whether trafficking in immovable property — Whether profits liable to income tax — Income Tax Ordinance, 1947 s. 10(1)(a).*

The appellant company, one of whose objects was to traffic and otherwise deal in or turn into account immovable property, had acquired certain lands and constructed a building on them. Subsequently it agreed to sell the lands and building to another company in exchange for shares in the company. The value of the shares exceeded the cost of the property and the Comptroller of Income Tax assessed the company for tax on the profits so obtained. It was urged on behalf of the appellant that the company was not carrying on the business of buying and selling property but investment business. It was contended further that this was an isolated transaction and not even an adventure or concern in the nature of trade. The Special Commissioners held that the profits were assessable to tax, as the company was carrying on the business of trafficking in land.

**Held:** the facts of this case supported the decision of the Special Commissioners that although there was only one transaction, it was carried on with the intention of dealing with property. The appeal therefore must be dismissed.

*Cases referred to:-*

(1) *California Copper Syndicate* v. *Harris* 5 T.C. 159.

(2) *Commissioner of Inland Revenue* v. *Livingston and others* 11 T.C. 358 at pages 542 and 543.

(3) *E.* v. *C.I.R.* [1970] 2 M.L.J. 118.

(4) *C.I.R.* v. *Reinhold* 34 T.C. 392.

CASE STATED.

*Lim Ewe Hock* for the appellant

*T. S. Nathan* for the respondent.

**Ong Hock Sim F.J.:** This is an appeal by way of case stated against the decision of the Special Commissioners made September 19, 1968 that in transferring its property known as the I. Building to Island Hotels and Properties (M) Limited in exchange for the shares in Island and Properties (M) Limited, the appellant company was carrying on the business of trafficking in immoveable property and that the profits obtained thereby by the appellant company were assessable under section 10(1)(a) of the Income Tax Ordinance, 1947 to tax.

The facts as found by the Commissioners are as follows:

1. The appellant company, the I. Investment Ltd., was incorporated and registered in Malaya under the Companies Ordinance 1940 to 1946 on January 16, 1962, with an authorised capital of $500,000 divided into 5,000 ordinary shares of $100 each. The two subscribers to the Memorandum and Articles of Association were T. S. H. and T. Y. F. (f), wife of C. M. T., who were also the first directors of the appellant company. On its formation, the following persons applied for shares in it as follows: —

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|---|---|---|
| T. S. H. | — | 1,400 shares |
| C. M. T. | — | 1,400 shares |
| T. Y. F. (f) | — | 100 shares |
| O. S. H. (f) | — | 100 shares |